

**MINUTES  
BOARD OF ADJUSTMENT  
CITY HALL COUNCIL CHAMBERS  
116 W. NEEDLES AVE.  
BIXBY, OK 74008  
August 04, 2014 6:00 PM**

In accordance with the Oklahoma Open Meeting Act, Title 25 O.S. Section 311, the agenda for this meeting was posted on the bulletin board in the lobby of City Hall, 116 W. Needles Ave., Bixby, Oklahoma on the date and time as posted thereon, a copy of which is on file and available for public inspection, which date and time was at least twenty-four (24) hours prior to the meeting, excluding Saturdays and Sundays and holidays legally declared by the State of Oklahoma.

**STAFF PRESENT:**

Erik Enyart, AICP, City Planner  
Patrick Boulden, Esq., City Attorney

**ATTENDING:**

See attached Sign-in Sheet

**CALL TO ORDER**

Meeting called to order by Chair Jeff Wilson at 6:00 PM.

**ROLL CALL**

Members Present: Jeff Wilson, JR Donelson, Murray King, and Larry Whiteley.

Members Absent: Darrell Mullins.

**MINUTES**

1 Approval of Minutes for July 07, 2014

Chair Jeff Wilson introduced the item and asked to entertain a Motion. Murray King made a MOTION to APPROVE the Minutes of July 07, 2014 as presented by Staff. JR Donelson SECONDED the Motion. Roll was called:

**ROLL CALL:**

AYE: King, Wilson, Donelson, & Whiteley

NAY: None.

ABSTAIN: None.

MOTION CARRIED: 4:0:0

Erik Enyart and Chair Jeff Wilson recognized Chad in attendance, a Boy Scout who stated he was working on his Eagle Scout rank. The Board members welcomed Chad to the meeting.

## OLD BUSINESS

Chair Jeff Wilson asked if there was any Old Business to consider. Erik Enyart stated that he had none. No action taken.

## NEW BUSINESS

Chair Jeff Wilson discussed with Erik Enyart the ordering of the related items on the agenda. Mr. Enyart recommended that they each be taken up separately, as they were separate items and not necessarily interdependent. Mr. Enyart noted that, if the land use item was not approved, then the rest would be moot.

### 2. (Continued from July 07, 2014)

**BBOA-589 – Randy Even for Paul Reynolds.** Discussion and possible action to approve a Special Exception per Zoning Code Section 11-8-5 to allow an Accessory Dwelling Unit in an RE Residential Estate District.

Property located: Lot 12, Block 1, *Bixby Ranch Estates*, City of Bixby, Tulsa County, Oklahoma; 13466 E. 205<sup>th</sup> St. S.

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Chair Jeff Wilson introduced the item and called on Erik Enyart for the Staff Report and recommendation. Mr. Enyart summarized the Staff Report as follows:

**To:** *Bixby Board of Adjustment*  
**From:** *Erik Enyart, AICP, City Planner*  
**Date:** *Tuesday, July 29, 2014*  
**RE:** *Report and Recommendations for:  
BBOA-589 – Randy Even for Paul Reynolds*

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LOCATION: – Lot 12, Block 1, *Bixby Ranch Estates*, City of Bixby, Tulsa County, Oklahoma  
– 13466 E. 205<sup>th</sup> St. S.

LOT SIZE: 5 acres, more or less

ZONING: RE Residential Estate District

REQUEST: Special Exception per Zoning Code Section 11-8-5 to allow an Accessory Dwelling Unit in an RE Residential Estate District

SURROUNDING ZONING AND LAND USE: RE & AG; Single-family rural residential homes and vacant/wooded lots zoned RE to the west, north, east, and southeast in *Bixby Ranch Estates*, and vacant/wooded land to the south zoned AG in unincorporated Tulsa County.

COMPREHENSIVE PLAN: Vacant, Agricultural, Rural Residences, and Open Land + Residential Area

PREVIOUS/RELATED CASES:  
BBOA-590 – Randy Even for Paul Reynolds – Request for Variance from the matching exterior materials requirement of Zoning Code Section 11-8-5.G for a proposed Accessory Dwelling Unit in an RE Residential Estate District for subject property – Pending BOA consideration 08/04/2014.  
BBOA-595 – Randy Even for Paul Reynolds – Request for Variance from the accessory building maximum floor area per Zoning Code Section 11-8-8.B.5 to allow a new, approximately 50' X 72', 3,600 square foot accessory building in the rear yard for property in the RE Residential Estate District for subject property – Pending BOA consideration 08/04/2014.

RELEVANT AREA CASE HISTORY: (not a complete list; includes only accessory building BOA cases in *Bixby Ranch Estates*; does not include cases in unincorporated Tulsa County)

BBOA-369 – Lorrie Penrose & Garret Roth – Request for Special Exception to allow a 3,081 square foot detached garage for storing vintage vehicles for property at 20227 S. 138<sup>th</sup> E. Ave. in Bixby Ranch Estates – Approved 08/06/2001.

BBOA-371 – Michael Gonker & Rebecca L. Holloway – Request for Special Exception to allow a 1,900 square foot detached garage for property at 13108 E. 201<sup>st</sup> St. S. in Bixby Ranch Estates – BOA Approved 09/04/2001.

BBOA-394 – Larry & Tammi McBurnett – Request for Variance to allow a 30' X 50' (1,500 square foot) metal garage and storage building for property at 13821 E. 203<sup>rd</sup> St. S. in Bixby Ranch Estates – BOA Approved 11/04/2002.

BBOA-422 – Alan R. Harris – Request for Variance to allow a 1,596 square foot detached garage for property at 13118 E. 205<sup>th</sup> St. S. (abutting subject property to the east) – BOA Approved 06/07/2004.

BBOA-462 – Wes Jones – Request for Variance to allow a 1,500 square foot accessory building for property at 13262 E. 205<sup>th</sup> St. S. (2 lots to the west of subject property) – BOA Approved 11/05/2007.

BBOA-465 – Jeff Seager – Request for Variance to allow a 30' X 40' (1,200 square foot) accessory building for property at 14015 E. 205<sup>th</sup> St. S. – BOA Approved for 1,500 square feet 11/05/2007.

**BACKGROUND INFORMATION:**

History of Accessory Dwelling Units (ADUs). One of the several changes the “General Cleanup” Zoning Code Text Amendment (Ord. # 2031 approved December 21, 2009) made included providing an approval process for Accessory Dwelling Units (ADUs). Zoning Code Section 11-2-1 now provides a definition for an ADU:

“DWELLING UNIT, ACCESSORY (ADU): A subordinate residential unit incorporated within, attached to, or detached from a single-family residential unit and having its own sleeping, cooking, and sanitation facilities. Such subordinate unit shall not be subdivided or otherwise segregated in ownership from the principal residential unit. Such unit shall not be occupied by more than three (3) persons. See Section 11-8-5.”

Section 11-8-5 was amended to read as follows:

“11-8-5: ONE SINGLE-FAMILY DWELLING PER LOT OF RECORD:

Not more than one single-family dwelling may be constructed on a lot, except in the case of a lot which is within an approved planned unit development or an Accessory Dwelling Unit (ADU) approved by Special Exception as follows:

- A. A lot of record which is subject to a restrictive covenant prohibiting more than one (1) dwelling unit per lot shall not be eligible for an ADU Special Exception;
- B. The Board of Adjustment shall consider the specific plans for the ADU and its relation to the principal dwelling and surrounding neighborhood and shall place reasonable conditions on the Special Exception approval as may be necessary to prevent undue adverse impacts;
- C. ADUs, if detached from the principal dwelling, shall meet the requirements prescribed for a detached accessory building;
- D. An ADU shall not be subdivided or otherwise segregated in ownership from the primary residential unit;
- E. An ADU shall not contain more than one (1) bedroom;
- F. Manufactured and modular homes shall not be used as ADUs;
- G. ADUs, whether detached from or attached to the principal dwelling, shall match the exterior materials of the primary residential unit and comply with the restrictive covenants affecting the lot, if any;
- H. An ADU shall not be considered in calculating livability space or land area per dwelling.”

ADUs are recognized as part of the same Use Unit 6 single family dwelling use for those lots of record on which they are located. They are structured such that they depend on the continued existence of the principal dwelling, and may be considered something like a “satellite” of the principal home.

This is the third Special Exception for an ADU requested under the new ADU amendment to the Zoning Code. The first, BBOA-524 – Richard Ekhoﬀ, was Conditionally Approved 08/02/2010 for an acreage located at 9024 E. 101<sup>st</sup> St. S. The second, BBOA-579 – Paul & Jimme Beth Hefner for Mary Elizabeth Brown, was Conditionally Approved 07/01/2013 to construct an ADU as a building addition to the existing barn building on a 16-acre agricultural tract at 9013/9017 E. 161<sup>st</sup> St. S. (not since constructed, however).

Intent of Occupancy. Per BBOA-595, the Applicant has stated that the proposed ADU would be for an “aging parent.” From the applications received thus far, semi-independent living quarters for family members is invariably the reason such ADU applications are pursued.

Private Restrictions. Zoning Code Section 11-8-5.A provides:

“A lot of record which is subject to a restrictive covenant prohibiting more than one dwelling unit per lot shall not be eligible for an ADU special exception;”

The Deed of Dedication and Restrictive Covenants on file with the City of Bixby with the plat of Bixby Ranch Estates, titled “Bixby Ranch Estates Protective Covenants and Easements,” provides the following as may pertain to the above requirement:

“1. All lots within the annexed plat shall be known and designated as residential building plots, no structures shall be erected, altered, placed or permitted to remain on any plot other than one detached single-family dwelling not to exceed three stories in height and other out-buildings incidental to residential use of the plot, no residential building shall be less than 1,100 square feet of living area.

....

5. No structure of temporary character, tent, shack, barn, mobile homes, or other outbuildings shall be used on any lot at any time as a residence.” (emphasis added)

The language, read together, (1) allows “out-buildings incidental to the residential use of the plot,” and (2) does not expressly prohibit an Accessory Dwelling Unit (ADU), but rather, suggests the same were not anticipated. It does expressly prohibit temporary structures, including “outbuildings,” from being used as a residence, which does not appear to anticipate a permanent accessory dwelling unit being constructed within a part of an outbuilding otherwise dedicated to storage. The language appears to prohibit storage buildings, not built to a Building Code standard for dwellings or manifestly arranged with elements required to support semi-independent living quarters, from being remodeled, retrofitted, or otherwise simply inhabited as a dwelling. However, Staff does not have the standing to officially interpret the private covenants either way. If the Board, however, chooses to read and interpret the private covenants as prohibiting the Accessory Dwelling Unit, this application must be tabled or denied, and BBOA-590 and BBOA-595 would then be moot.

History of the Applications. During the review of BBOA-589, Staff found that the building proposed (50’ X 70’ on the site plan but indicated as 50’ X 72’ in construction drawings, and possibly different if cited elsewhere) would exceed the maximum detached accessory building restriction in the RE and RS districts, which is 2,400 square feet. There is a “sliding scale” in Zoning Code Section 11-8-8.B.5, which the subject property, at approximately 4.8 acres, does not even qualify for 2,400 square feet, which requires 5.25 acres.

Zoning Code Section 11-8-5.C specifically restricts detached accessory buildings containing ADUs to the restrictions pertaining to accessory buildings:

“C. ADUs, if detached from the principal dwelling, shall meet the requirements prescribed for a detached accessory building;”

Per BBOA-595, the Applicant has since additionally requested a Variance from the maximum detached accessory building size of Zoning Code Section 11-8-8.B.5. As requested by the Applicant, BBOA-589 and BBOA-590 were Continued from the July 07, 2014 Board of Adjustment meeting to this August 04, 2014 meeting, so that all three (3) applications may be considered at one (1) time.

ANALYSIS:

Property Conditions. The subject property is a vacant/wooded lot containing approximately 5 acres and zoned RE. In the second quarter of 2014, the City of Bixby issued a Building Permit to allow the construction of a residence on the lot.

Comprehensive Plan. The Comprehensive Plan designates the subject property as (1) Vacant, Agricultural, Rural Residences, and Open Land and (2) Residential Area.

The permitted house / residential use and proposed ADU residential use element should be considered not inconsistent with the Comprehensive Plan.

Surrounding Zoning and Land Use Compatibility. Surrounding zoning patterns are primarily RE and AG, and the surrounding land is primarily rural residential homes and vacant/wooded lots in Bixby Ranch Estates. Abutting to the south is vacant/wooded land zoned AG in unincorporated Tulsa County.

The permitted residential and agricultural uses and proposed ADU residential use element would appear to be not inconsistent with surrounding land uses and zoning patterns.

General. This application proposes to construct the ADU living quarters within part of a proposed metal accessory building measuring approximately 50' X 72' (3,600 square feet). Per BBOA-595 and the submitted information, the living quarters would occupy the "front" 20' of the 50'-wide building, and so would contain 1,000 square feet. The accessory storage + ADU building is proposed to be located behind the permitted house.

Because Accessory Dwelling Units by Special Exception are a relatively-newly-allowed land use element, and experience with them in Bixby is limited, care should be taken to ensure that the approval is not detrimental to the neighborhood. To this end, in addition to the standard regulations for ADUs provided in the Zoning Code, Staff has provided specific recommended Conditions of Approval listed in the Staff Recommendation section of this report, in the event the Board approves the application.

The Applicant provided a site plan, building plans and specifications, photos of other properties in the neighborhood, and a narrative in support of BBOA-589 and BBOA-590.

The neighbor abutting the subject property to the west submitted a formal response to BBOA-589 and BBOA-590 "(and all related BOAs)," which response is attached to this report. The response appears to provide certain objections and expresses certain concerns for the applications.

It should be noted that the term "ADU," as used in the Applicant's narrative and as also used in the neighbor's narrative, is interpreted as usually meaning "accessory building," not an "ADU" as defined in the Zoning Code. Staff is not aware of any existing ADUs in the neighborhood, and the neighbor's narrative disclaims the existence of any here, but it is possible such exist.

Zoning Code Section 11-8-5.G provides, "ADUs, whether detached from or attached to the principal dwelling, shall match the exterior materials of the primary residential unit and comply with the restrictive covenants affecting the lot, if any." The Applicant, per BBOA-590, is seeking a Variance from this requirement.

Per BBOA-595, the Applicant is also seeking a Variance from the accessory building maximum floor area standard per Zoning Code Section 11-8-8.B.5 to allow a new, approximately 50' X 72', 3,600 square foot accessory building. That standard would limit the building to 2,400 square feet. There is a "sliding scale" in Zoning Code Section 11-8-8.B.5, under which the subject property, at almost 5 acres, may not even qualify for 2,400 square feet.

In the application materials, the Applicant states: "Other lots that had [accessory buildings] I could not see or get access for pictures. Area older neighborhood with heavy cover. Could not find one building that had any matching elements except color of metal siding on one. Lot next to site has [an accessory] metal building with no matching elements.

On this site the home and ADU will [sit] back 200' in heavy wooded lot. Will be very hard to see from road or neighbors with the exception of lot to the East.

This property with the ADU not only hard to see from the road but also is very consistent with surrounding lots, homes, and [accessory buildings]. Very private and secluded area of South Bixby."

The Applicant's arguments are intended to support both BBOA-589 and BBOA-590. Based on the provided materials, the proposal includes: House will be set back 210' from 205<sup>th</sup> St. S., accessory building will be set back 275' from 205<sup>th</sup> St. S. (or 5' behind the back of the house, even though not accurately represented on the site plan from a relative standpoint), lot is heavily wooded, accessory building will not be as visible from street or adjoining properties (except to the east) due to location behind the house and the heavy tree cover, and several other properties in the neighborhood have accessory buildings, commonly metal buildings and commonly large.

The case history in the neighborhood also reflects a large number of large storage buildings in the neighborhood. The proposed one, however, would be the largest such accessory building reflected in the available records.

Staff Recommendation. Based on the Comprehensive Plan, surrounding zoning and land use patterns, and the arguments provided by the Applicant and those presented in the analysis above, Staff has no objections to the application as outlined below.

Zoning Code Section 11-8-5.B provides:

*“The board of adjustment shall consider the specific plans for the ADU and its relation to the principal dwelling and surrounding neighborhood and shall place reasonable conditions on the special exception approval as may be necessary to prevent undue adverse impacts;”*

Therefore, if the Board finds the Special Exception for an ADU to be in harmony with the spirit and intent of the Zoning Code and not injurious to the neighborhood or otherwise detrimental to the public welfare, Staff recommends that Approval be subject to the following Conditions of Approval:

1. The ADU approval shall only extend to that part of the proposed accessory building as proposed by the Applicant.
2. The ADU shall fully comply with the Building Code.
3. If the Board of Adjustment does not approve a Variance from the matching exterior materials standard of Zoning Code Section 11-8-5.G per BBOA-590, the Applicant shall prepare plans showing how the proposed accessory building will be made to match the house, which plans must to be submitted for presentation, at a later meeting date, to the Board of Adjustment and approved by the Board as a part of this application. This application shall not be deemed fully approved until such has occurred.
4. If the ADU building is ever substantially damaged, meaning for these purposes that the cost to repair such damage would exceed 50% of the pre-damaged value of the building, the Special Exception shall expire and be automatically vacated and the ADU use of the building addition shall not be restored, absent further Zoning approval as may be then required.
5. If any of the facilities necessary to support living quarters (sleeping, kitchen/cooking, sanitation, etc.) are disabled or removed, the Special Exception shall expire and be automatically vacated and the ADU use of the building shall not be restored, absent further Zoning approval as may be then required.

Randy Even introduced George Cage, the “aging parent who [would be living] in this [Accessory Dwelling Unit] property.”

Randy Even distributed handouts showing two (2) versions of proposed interior layouts and described them.

Randy Even asked if any of the Board members had “been out there in the last few years?” Mr. Even stated that he was building the house on the property and described “what’s out there” in the “very heavily wooded” neighborhood. Mr. Even described a property which he said “looks like a vehicle junkyard... 10 or more vehicles.” Mr. Even described a property which appeared to have an [accessory building] two (2) times the size of the house.

Chair Jeff Wilson clarified with Randy Even that he was referring to “accessory buildings,” and not “Accessory Dwelling Units” when using the term “ADU.”

Randy Even suggested that one accessory building could have someone living in it at this time. Mr. Even noted that his client was spending \$½ Million on the property, which he claimed would improve the values in the neighborhood.

JR Donelson asked Randy Even if there were not a lot of noncompliant structures in the neighborhood, and Mr. Even agreed there were “a lot out there but I don’t know if they’re noncompliant.” Mr. Even noted that none of the accessory buildings appeared to have elements

matching [their principal dwellings]. Mr. Even reiterated that the work being done would only improve the area.

JR Donelson and Randy Even discussed the restrictive covenants. Larry Whiteley discussed with Erik Enyart the location of Bixby Ranch Estates. Mr. Even stated, “They bought because they wanted [this] accessory building” and were “unaware” of the restrictions. Mr. Even discussed the application with people in the audience.

George Cage stated that he was a retired, disabled Vietnam veteran, and currently owned a 1,900-square-foot home in Wakefield Glen in Jenks. Mr. Cage stated that the accessory building would have the same color scheme as his daughter’s house [under construction]. Mr. Cage stated that the living area in the new building would be smaller than what he had, and he currently had a 3-car garage that was full, and had an RV. Mr. Cage stated that he also did woodworking, and that he had “scaled-out” the building—the rest was “eaten up” with the RV, cars, and [other storage purposes as indicated on the drawings].

Randy Even noted that work on the structure was a task to be done with the whole family. Mr. Even stated that it “will be nice,” would “not be a cheap building,” that it would have a post-tension slab for the living quarters per the Building Code, that it would have the same color scheme as the house, and that it would have a “wrought veneer” [wainscot along the bottom]. Mr. Even stated that his client was working from a fixed budget, and asked for five (5) years to do the wrought veneer, 4’ high. Mr. Even stated that this would not be a “drawdown to the neighborhood at all.” Mr. Even stated that the trees would be cleared, but “not all of them,” because it was too thick to get in with a bulldozer [in order to construct the house and accessory building].

Larry Whiteley discussed with George Cage [the family’s relationship to the two (2) buildings]. Mr. Cage stated that he would leave the [accessory building and/or entire property] to his kids.

Larry Whiteley asked George Cage if the neighbors he had talked to were okay with the proposal, and Mr. Cage responded that one (1) was not. Mr. Cage stated that his would be the most expensive property in the neighborhood.

Chair Jeff Wilson recognized Gregg Batary of 13364 E. 205<sup>th</sup> St. S. from the Sign-In Sheet. Mr. Batary stated that he and his wife had lived in this neighborhood for 10 years, and that, when they moved in, it was a neighborhood with nice single-family homes, with large sheds, but with no one living in them. Mr. Batary stated that his main issue was that someone would be living in the accessory building, and it would be “a second home to us.” Mr. Batary acknowledged that things can change over time. Mr. Batary stated that the owner would see the ADU as a “source of potential income,” and that the ADU would be hard to police. Mr. Batary objected to the size, stating it would be “about the same size as the home itself,” at approximately 3,500 square feet, compared to approximately 3,840 square feet for the primary residence. Mr. Batary stated they would be “almost equal in size.” Mr. Batary expressed concern that he would have to tell a buyer of his property that there are two (2) homes on the one (1) property next to his, but there would be no others like it in the neighborhood. Mr. Batary stated that he believed it would be “a detriment to the value of my home.”

Chair Jeff Wilson clarified with Greg Batary that his concerns were (1) the size and (2) that someone would be living in the accessory building. Mr. Batary stated that he had no problem with a large outbuilding [in and of itself].

Chair Jeff Wilson confirmed with Greg Batary that he was also concerned that the ADU may be used as a “garage apartment” [rental property] somewhere down the line. Mr. Batary stated that he understood the Applicant’s desire, as he himself had suffered the loss of a family member, but asserted there were other remedies, such as a “mother-in-law” quarters attached to the house.

Chair Jeff Wilson recognized Keith Churchill of 20738 S. 142<sup>nd</sup> E. Ave. from the Sign-In Sheet. Mr. Churchill stated that he had lived in Bixby Ranch Estates for 10 years, and that the “Council rejected a multiple family dwelling” in the past, which had been proposed by the “Creek Nation.” Mr. Churchill stated that he was “concerned if we deviate from one (1) family” properties. Mr. Churchill stated that he had a 5-acre vacant lot next to his property, and was worried that it may too have [an ADU approved on it], which “might devalue my property.” Mr. Churchill expressed concern for precedent.

JR Donelson asked Erik Enyart if he had found a case regarding the “Creek Nation” that Keith Churchill was referring to, and Mr. Enyart responded, “No, but I didn’t do a complete search.”

Keith Churchill stated that “Mr. Skaggs” had tried to revive the [homeowners’] Association.

Randy Even stated “This is a family” and discussed extended health care issues. Mr. Even stated, “They plan to spend the rest of their lives there. It may not be conducive to the neighborhood to put a \$½ Million house in.” Mr. Even stated, “I build houses,” and indicated, in general, that it could be a mistake to put in too nice a house for the neighborhood. Mr. Even stated that this would “definitely would be one of the nicer homes” in the neighborhood. Mr. Even stated that Bixby Ranch Estates was not cared for, citing the condition of the roads and ditches. Mr. Even stated that his clients wanted to “keep the family together.” Mr. Even indicated that the ADU could be restricted to occupancy by family members. Mr. Even stated that he would be privileged if his son or daughter built next to him someday. Mr. Even stated that the location was 205<sup>th</sup> St. S., was “not in the middle of Bixby” or a “real fancy subdivision,” and it was “close to the end of the trail.” Mr. Even stated that the homes were secluded, suggested that the property would be hidden from the property to the west, and stated that it would be “completely hidden from the road.” Mr. Even indicated his clients would agree that, if the [ADU element of the] property was vacated, the Special Exception approval would be vacated. Mr. Even stated that this was a family unit that “wants to stick together.”

Chair Jeff Wilson asked about the previous suggestion using a mother-in-law plan, with a larger house.

Randy Even stated that he already had to move the house, as there was “solid rock behind the house,” described the “watershed” situation on the property, and stated that it “dictates where we put things.” Mr. Even stated that the mother-in-law addition would be difficult, and that it had already taken a lot of work to make the house work [on the site]. Mr. Even stated that it would



also be much more costly. Mr. Even stated that he often sees accessory buildings with offices or a “tack room,” and bathrooms installed, and that he did not see a big difference between that and what was proposed here.

Chair Jeff Wilson asked Erik Enyart if there were restrictions on renting out an ADU, and Mr. Enyart stated that he did not recall such a restriction in the Zoning Code, so it would have to be a Condition of Approval, if the Board should approve the application.

JR Donelson suggested a restriction that the ADU could not be sold separately from the house, and Erik Enyart confirmed “That is in the Code.”

Chair Jeff Wilson noted that the City Council had allowed ADUs by policy in the ordinance, and asked, rhetorically, “If not here, where would this work?”

Murray King noted that one of the main concerns of the neighbors was renting the ADU to non-family members. Erik Enyart stated that the Board could impose an occupancy restriction as a Condition of Approval, should it choose to approve. Mr. Enyart noted that it would then become an enforcement issue because the living quarters would remain in the building.

Randy Even stated that the two (2) dwellings could be allowed if the property was split, and stated that the property would meet the requirements for a Lot-Split.

Larry Whiteley confirmed with Randy Even that the big rocks make it difficult to build on the property, and Mr. Even stated that the hydrology did also.

Chair Jeff Wilson clarified with Erik Enyart that it would be best that the Board take up the [Special Exception/]land use/entitlement question first, before taking up the Variances.

After further discussion, JR Donelson made a MOTION to APPROVE BBOA-589 with the five (5) Conditions of Approval as recommended by Staff. Larry Whiteley SECONDED the Motion.

Discussion ensued. JR Donelson indicated the restrictions in place in the Zoning Code were adequate. Murray King expressed concern for renting the ADU. Mr. Donelson noted that all property owners have the right to rent their property. Patrick Boulden confirmed that the Board likely cannot [legally] restrict renting the ADU but could restrict occupancy from anyone other than a family member. Randy Even asked if there could be an exception made for [in-home] medical care workers. Larry Whiteley stated, “They can come to your home, every day” if need be.

JR Donelson Amended his Motion to be as follows: a MOTION to APPROVE BBOA-589 with the five (5) Conditions of Approval as recommended by Staff plus a restriction on occupancy to family members pursuant to the City Attorney’s statements on occupancy and rental. Larry Whiteley SECONDED the Amended Motion.

The Motion was clarified that the restriction by Condition of Approval pertained to the occupancy [not the rental].

Roll was called:

**ROLL CALL:**

AYE: King, Wilson, Donelson, & Whiteley  
NAY: None.  
ABSTAIN: None.  
MOTION CARRIED: 4:0:0

3. (Continued from July 07, 2014)

**BBOA-590 – Randy Even for Paul Reynolds.** Discussion and possible action to approve a Variance from the matching exterior materials requirement of Zoning Code Section 11-8-5.G for a proposed Accessory Dwelling Unit in an RE Residential Estate District.

Property located: Lot 12, Block 1, *Bixby Ranch Estates*, City of Bixby, Tulsa County, Oklahoma; 13466 E. 205<sup>th</sup> St. S.

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Chair Jeff Wilson introduced the item and called on Erik Enyart for the Staff Report and recommendation. Mr. Enyart summarized the Staff Report as follows:

**To:** *Bixby Board of Adjustment*  
**From:** *Erik Enyart, AICP, City Planner*  
**Date:** *Tuesday, July 29, 2014*  
**RE:** *Report and Recommendations for:  
BBOA-590 – Randy Even for Paul Reynolds*

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**LOCATION:** – *Lot 12, Block 1, Bixby Ranch Estates, City of Bixby, Tulsa County, Oklahoma*  
– *13466 E. 205<sup>th</sup> St. S.*

**LOT SIZE:** *4.8 acres, more or less*

**ZONING:** *RE Residential Estate District*

**REQUEST:** *Variance from the matching exterior materials requirement of Zoning Code Section 11-8-5.G for a proposed Accessory Dwelling Unit in an RE Residential Estate District*

**SURROUNDING ZONING AND LAND USE:** *RE & AG; Single-family rural residential homes and vacant/wooded lots zoned RE to the west, north, east, and southeast in Bixby Ranch Estates, and vacant/wooded land to the south zoned AG in unincorporated Tulsa County.*

**COMPREHENSIVE PLAN:** *Vacant, Agricultural, Rural Residences, and Open Land + Residential Area*

**PREVIOUS/RELATED CASES:**  
*BBOA-589 – Randy Even for Paul Reynolds – Request for Special Exception per Zoning Code Section 11-8-5 to allow an Accessory Dwelling Unit in an RE Residential Estate District for subject property – Pending BOA consideration 08/04/2014.*  
*BBOA-595 – Randy Even for Paul Reynolds – Request for Variance from the accessory building maximum floor area per Zoning Code Section 11-8-8.B.5 to allow a new, approximately 50' X 72', 3,600 square foot accessory building in the rear yard for property in the RE Residential Estate District for subject property – Pending BOA consideration 08/04/2014.*

**RELEVANT AREA CASE HISTORY:** *(not a complete list; includes only accessory building BOA cases in Bixby Ranch Estates; does not include cases in unincorporated Tulsa County)*  
*BBOA-369 – Lorrie Penrose & Garret Roth – Request for Special Exception to allow a 3,081 square foot detached garage for storing vintage vehicles for property at 20227 S. 138<sup>th</sup> E. Ave. in Bixby Ranch Estates – Approved 08/06/2001.*

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**BACKGROUND INFORMATION:**

History of Accessory Dwelling Units (ADUs). One of the several changes the “General Cleanup” Zoning Code Text Amendment (Ord. # 2031 approved December 21, 2009) made included providing an approval process for Accessory Dwelling Units (ADUs). Zoning Code Section 11-2-1 now provides a definition for an ADU:

“DWELLING UNIT, ACCESSORY (ADU): A subordinate residential unit incorporated within, attached to, or detached from a single-family residential unit and having its own sleeping, cooking, and sanitation facilities. Such subordinate unit shall not be subdivided or otherwise segregated in ownership from the principal residential unit. Such unit shall not be occupied by more than three (3) persons. See Section 11-8-5.”

Section 11-8-5 was amended to read as follows:

“11-8-5: ONE SINGLE-FAMILY DWELLING PER LOT OF RECORD:

Not more than one single-family dwelling may be constructed on a lot, except in the case of a lot which is within an approved planned unit development or an Accessory Dwelling Unit (ADU) approved by Special Exception as follows:

- A. A lot of record which is subject to a restrictive covenant prohibiting more than one (1) dwelling unit per lot shall not be eligible for an ADU Special Exception;
- B. The Board of Adjustment shall consider the specific plans for the ADU and its relation to the principal dwelling and surrounding neighborhood and shall place reasonable conditions on the Special Exception approval as may be necessary to prevent undue adverse impacts;
- C. ADUs, if detached from the principal dwelling, shall meet the requirements prescribed for a detached accessory building;
- D. An ADU shall not be subdivided or otherwise segregated in ownership from the primary residential unit;
- E. An ADU shall not contain more than one (1) bedroom;
- F. Manufactured and modular homes shall not be used as ADUs;
- G. ADUs, whether detached from or attached to the principal dwelling, shall match the exterior materials of the primary residential unit and comply with the restrictive covenants affecting the lot, if any;
- H. An ADU shall not be considered in calculating livability space or land area per dwelling.”

ADUs are recognized as part of the same Use Unit 6 single family dwelling use for those lots of record on which they are located. They are structured such that they depend on the continued existence of the principal dwelling, and may be considered something like a “satellite” of the principal home.

This is the third Special Exception for an ADU requested under the new ADU amendment to the Zoning Code. The first, BBOA-524 – Richard Ekhoﬀ, was Conditionally Approved 08/02/2010 for an acreage located at 9024 E. 101<sup>st</sup> St. S. The second, BBOA-579 – Paul & Jimmie Beth Hefner for Mary Elizabeth Brown, was Conditionally Approved 07/01/2013 to construct an ADU as a building addition to the existing barn building on a 16-acre agricultural tract at 9013/9017 E. 161<sup>st</sup> St. S. (not since constructed, however).

Intent of Occupancy. Per BBOA-595, the Applicant has stated that the proposed ADU would be for an “aging parent.” From the applications received thus far, semi-independent living quarters for family members is invariably the reason such ADU applications are pursued.

Private Restrictions. Zoning Code Section 11-8-5.A provides:

“A lot of record which is subject to a restrictive covenant prohibiting more than one dwelling unit per lot shall not be eligible for an ADU special exception;”

The Deed of Dedication and Restrictive Covenants on file with the City of Bixby with the plat of Bixby Ranch Estates, titled “Bixby Ranch Estates Protective Covenants and Easements,” provides the following as may pertain to the above requirement:

“1. All lots within the annexed plat shall be known and designated as residential building plots, no structures shall be erected, altered, placed or permitted to remain on any plot other than one detached single-family dwelling not to exceed three stories in height and other out-buildings incidental to residential use of the plot, no residential building shall be less than 1,100 square feet of living area.

....

5. No structure of temporary character, tent, shack, barn, mobile homes, or other outbuildings shall be used on any lot at any time as a residence.” (emphasis added)

The language, read together, (1) allows “out-buildings incidental to the residential use of the plot,” and (2) does not expressly prohibit an Accessory Dwelling Unit (ADU), but rather, suggests the same were not anticipated. It does expressly prohibit temporary structures, including “outbuildings,” from being used as a residence, which does not appear to anticipate a permanent accessory dwelling unit being constructed within a part of an outbuilding otherwise dedicated to storage. The language appears to prohibit storage buildings, not built to a Building Code standard for dwellings or manifestly arranged with elements required to support semi-independent living quarters, from being remodeled, retrofitted, or otherwise simply inhabited as a dwelling. However, Staff does not have the standing to officially interpret the private covenants either way. If the Board, however, chooses to read and interpret the private covenants as prohibiting the Accessory Dwelling Unit, BBOA-589 must be tabled or denied, and this application and BBOA-595 would then be moot.

History of the Applications. During the review of BBOA-589, Staff found that the building proposed (50' X 70' on the site plan but indicated as 50' X 72' in construction drawings, and possibly different if cited elsewhere) would exceed the maximum detached accessory building restriction in the RE and RS districts, which is 2,400 square feet. There is a “sliding scale” in Zoning Code Section 11-8-8.B.5, which the subject property, at approximately 4.8 acres, does not even qualify for 2,400 square feet, which requires 5.25 acres.

Zoning Code Section 11-8-5.C specifically restricts detached accessory buildings containing ADUs to the restrictions pertaining to accessory buildings:

“C. ADUs, if detached from the principal dwelling, shall meet the requirements prescribed for a detached accessory building;”

Per BBOA-595, the Applicant has since additionally requested a Variance from the maximum detached accessory building size of Zoning Code Section 11-8-8.B.5. As requested by the Applicant, BBOA-589 and BBOA-590 were Continued from the July 07, 2014 Board of Adjustment meeting to this August 04, 2014 meeting, so that all three (3) applications may be considered at one (1) time.

#### ANALYSIS:

Property Conditions. The subject property is a vacant/wooded lot containing approximately 5 acres and zoned RE. In the second quarter of 2014, the City of Bixby issued a Building Permit to allow the construction of a residence on the lot.

Tests and Standard for Granting Variance. Oklahoma State Statutes Title 11 Section 44.107 and Bixby Zoning Code Section 11-4-8.A and .C together provide the following generalized tests and standards for the granting of Variance:

- Unnecessary Hardship.
- Peculiarity, Extraordinary, or Exceptional Conditions or Circumstances.
- Finding of No Substantial Detriment or Impairment.
- Variance would be Minimum Necessary.

Nature of Variance. The Applicant's clients are seeking to construct an Accessory Dwelling Unit within a proposed 50' X 72', 3,600 square foot accessory building. Per BBOA-595 and the submitted information, the living quarters would occupy the "front" 20' of the 50'-wide building, and so would contain 1,000 square feet. Zoning Code Section 11-8-5.G provides, "ADUs, whether detached from or attached to the principal dwelling, shall match the exterior materials of the primary residential unit and comply with the restrictive covenants affecting the lot, if any." Per this application, the Applicant is seeking a Variance from this requirement.

The Applicant provided a site plan, building plans and specifications, photos of other properties in the neighborhood, and a narrative in support of BBOA-589 and BBOA-590.

The neighbor abutting the subject property to the west submitted a formal response to BBOA-589 and BBOA-590 "(and all related BOAs)," which response is attached to this report. The response appears to provide certain objections and expresses certain concerns for the applications.

It should be noted that the term "ADU," as used in the Applicant's narrative and as also used in the neighbor's narrative, is interpreted as usually meaning "accessory building," not an "ADU" as defined in the Zoning Code. Staff is not aware of any existing ADUs in the neighborhood, and the neighbor's narrative disclaims the existence of any here, but it is possible such exist.

Per BBOA-595, the Applicant is also seeking a Variance from the accessory building maximum floor area standard per Zoning Code Section 11-8-8.B.5 to allow a new, approximately 50' X 72', 3,600 square foot accessory building. That standard would limit the building to 2,400 square feet. There is a "sliding scale" in Zoning Code Section 11-8-8.B.5, under which the subject property, at almost 5 acres, may not even qualify for 2,400 square feet.

Zoning Code Section 11-8-5.C specifically restricts detached accessory buildings containing ADUs to the restrictions pertaining to accessory buildings:

"C. ADUs, if detached from the principal dwelling, shall meet the requirements prescribed for a detached accessory building;"

If BBOA-595 is approved, this restriction would be satisfied.

Unnecessary Hardship. The Applicant claims that an Unnecessary Hardship would be caused by the literal enforcement of the Zoning Code because "To apply of code it could cause financial hardship However willing to match home (wainscot ?) w/in 5 years."

Financial hardships, in and of themselves, are generally not recognized as satisfying the Unnecessary Hardship test and standard provided in State Statutes and the Bixby Zoning Code. Staff could not conceive of any other viable arguments in this regard. The provided argument presented in the application does not appear to materially address this test and standard. If the Board is amenable to this Variance, it should identify with the Applicant how the requested Variance would be in accordance with this test and standard provided in State Statutes and the Bixby Zoning Code.

Peculiar, Extraordinary, or Exceptional Conditions or Circumstances. The Applicant responded to the question asking how the subject property and its Condition or Situation is Peculiar, Extraordinary, and/or Exceptional by stating, "Almost 5 acre lots, Rural area, heavily wooded lots set back over 200 feet accessory building behind new home."

The argument appears to indicate that the lot size, the rural nature of the area, the heavy woods, the 200' plus setback, and location of the accessory building/ADU behind the house combine to mitigate the need for the matching exteriors requirement. These are better arguments for the No Substantial Detriment text and standard, but they also appear to somewhat address this text and standard as well. The Board must find that they adequately satisfy this test and standard provided in State Statutes and the Bixby Zoning Code.

Finding of No Substantial Detriment or Impairment. The Applicant claims that the requested Variance would Not Cause Substantial Detriment to the Public Good or Impair the Purposes, Spirit and Intent of the Zoning Code or the Comprehensive Plan because "See b and attached."

The response to "b." on the application form (Peculiar, Extraordinary, or Exceptional Conditions or Circumstances) is "Almost 5 acre lots, Rural area, heavily wooded lots set back over 200 feet accessory building behind new home."

*Elsewhere on the application form, the Applicant has further addressed this question thus, "Other lots that had [accessory buildings] I could not see or get access for pictures. Area older neighborhood with heavy cover. Could not find one building that had any matching elements except color of metal siding on one. Lot next to site has [an accessory] metal building with no matching elements.*

*On this site the home and ADU will [sit] back 200' in heavy wooded lot. Will be very hard to see from road or neighbors with the exception of lot to the East.*

*This property with the ADU not only hard to see from the road but also is very consistent with surrounding lots, homes, and [accessory buildings]. Very private and secluded area of South Bixby."*

*The Applicant's arguments are intended to support both BBOA-589 and BBOA-590. Based on the provided materials, the proposal includes: House will be set back 210' from 205<sup>th</sup> St. S., accessory building will be set back 275' from 205<sup>th</sup> St. S. (or 5' behind the back of the house, even though not accurately represented on the site plan from a relative standpoint), lot is heavily wooded, accessory building will not be as visible from street or adjoining properties (except to the east) due to location behind the house and the heavy tree cover, and several other properties in the neighborhood have accessory buildings, commonly metal buildings and commonly large.*

*The case history in the neighborhood also reflects a large number of large storage buildings in the neighborhood. The proposed one, however, would be the largest such accessory building reflected in the available records.*

*Staff agrees that the lot size, the rural nature of the area, the heavy woods, the 200' plus setback, and location of the accessory building/ADU behind the house combine to mitigate the need for the matching exteriors requirement in satisfaction of this test and standard of State Statutes and the Bixby Zoning Code.*

*The effect of this Variance would be further mitigated if the approval was only for five (5) years, as suggested by the Applicant.*

*Finding of Minimum Necessary. The Applicant claims that the requested Variance would be the Minimum Necessary to Alleviate the Unnecessary Hardship because "Not a measurable variance except for 5 years."*

*The Minimum Necessary to Alleviate the Unnecessary Hardship standard should be considered not applicable, or otherwise inherently satisfied, as this Variance seeks a qualitative and not quantitative form of relief (Variance from matching exteriors requirement). However, if the Board is amenable to this application and applies a Condition of Approval that the matching materials be applied within five (5) years, as suggested by the Applicant, or if the Board required some amount of matching exteriors, these would be measurable conditions subject to the Board's findings.*

*Staff Recommendation. Except as noted otherwise hereinabove, the arguments advanced by the Applicant and Staff appear to adequately answer some of the tests and standards for granting Variance under State Statutes and the Bixby Zoning Code.*

*The Board may wish to consider the arguments presented in the application, or others that the Applicant and Board may discover during public hearing and consideration of this case at the meeting, to identify with the Applicant how the requested Variance would be in accordance with each of the tests and standards provided in State Statutes and the Bixby Zoning Code.*

*If the Board is amenable to this application, it may want to consider a Condition of Approval that the matching materials be applied within five (5) years. The adequacy of the matching materials would be determined by the Board upon the approval of the Special Exception for the ADU as recommended per BBOA-589.*

Randy Even stated that his client intended[, within five (5) years,] to use rock or rock and brick with lap siding.

JR Donelson asked the Applicant if they would consider buying more material now. Randy Even stated that his clients were considering a 4' "wainscot" of brick on the front of the building matching the brick on the front of the house. Mr. Donelson advised Mr. Even that [he and his client] should consider buying the material now so that the colors and materials would match. Mr. Even estimated the amount of square feet of material, including cultured stone, would be required, and how much it would cost at \$5.00 a square foot. Mr. Even indicated objection to

buying the materials now, as they would have to be stored in the accessory building, and then his client would need a bigger building. Mr. Even rejected a suggestion of outside storage, stating, if one would “store it outside, it would be stolen or destroyed.” Mr. Even stated that the windows and front door would match those of the house “as much as humanly possible.” Mr. Even suggested that the need for the matching materials requirement would be attenuated due to the location of the structure “in the thick, heavy woods.” Murray King indicated agreement.

Christina George stated that she lived in the neighborhood and walked by the property regularly. Ms. George asserted that one would be able to see the building from the house next door and from the street.

JR Donelson confirmed with the Applicant that the eave height would be 18’ because of the RV.

Christina George complained about the conditions of the streets, and JR Donelson advised Ms. George to contact her [Ward] Councilor [Richie] Stewart.

Chair Jeff Wilson discussed with Erik Enyart the proposed five (5) year time limitation on the matching materials requirement. Mr. Enyart stated that, as he understood it, the Applicant agreed to a five (5)-year limit, so this application would thus become a “temporary Variance.” Mr. Enyart agreed with Mr. Wilson that the City would be responsible for ensuring that the requirement was fulfilled within five (5) years. Mr. Enyart stated that someone at the City would have to keep track of this case, and so would have to create a new program to remember it. Mr. Enyart reminded the Board members that the Applicant would have to come back to the Board at the next or a later meeting to propose what they will do in terms of matching exteriors, and that the Special Exception would not be completely approved until this had occurred.

After further discussion, Larry Whiteley made a MOTION to APPROVE BBOA-590 for five (5) years, subject to Board of Adjustment approval of plans for matching exteriors as per the approval conditions of BBOA-589. Murray King SECONDED the Motion. Roll was called:

**ROLL CALL:**

AYE:	King, Wilson, Donelson, & Whiteley
NAY:	None.
ABSTAIN:	None.
MOTION CARRIED:	4:0:0

4. **BBOA-595 – Randy Even for Paul Reynolds.** Discussion and possible action to approve a Variance from the accessory building maximum floor area per Zoning Code Section 11-8-8.B.5 to allow a new, approximately 50’ X 72’, 3,600 square foot accessory building in the rear yard for property in the RE Residential Estate District.

Property located: Lot 12, Block 1, *Bixby Ranch Estates*, City of Bixby, Tulsa County, Oklahoma; 13466 E. 205<sup>th</sup> St. S.

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Chair Jeff Wilson introduced the item and called on Erik Enyart for the Staff Report and recommendation. Mr. Enyart summarized the Staff Report as follows:

<i>To:</i>	<i>Bixby Board of Adjustment</i>
<i>From:</i>	<i>Erik Enyart, AICP, City Planner</i>

**Date:** Tuesday, July 29, 2014  
**RE:** Report and Recommendations for:  
BBOA-595 – Randy Even for Paul Reynolds

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**LOCATION:** – Lot 12, Block 1, Bixby Ranch Estates, City of Bixby, Tulsa County, Oklahoma  
– 13466 E. 205<sup>th</sup> St. S.  
**LOT SIZE:** 4.8 acres, more or less  
**ZONING:** RE Residential Estate District  
**REQUEST:** Variance from the accessory building maximum floor area per Zoning Code Section 11-8-8.B.5 to allow a new, approximately 50' X 72', 3,600 square foot accessory building in the rear yard for property in the RE Residential Estate District

**SURROUNDING ZONING AND LAND USE:** RE & AG; Single-family rural residential homes and vacant/wooded lots zoned RE to the west, north, east, and southeast in Bixby Ranch Estates, and vacant/wooded land to the south zoned AG in unincorporated Tulsa County.

**COMPREHENSIVE PLAN:** Vacant, Agricultural, Rural Residences, and Open Land + Residential Area  
**PREVIOUS/RELATED CASES:**

BBOA-589 – Randy Even for Paul Reynolds – Request for Special Exception per Zoning Code Section 11-8-5 to allow an Accessory Dwelling Unit in an RE Residential Estate District for subject property – Pending BOA consideration 08/04/2014.

BBOA-590 – Randy Even for Paul Reynolds – Request for Variance from the matching exterior materials requirement of Zoning Code Section 11-8-5.G for a proposed Accessory Dwelling Unit in an RE Residential Estate District for subject property – Pending BOA consideration 08/04/2014.

**RELEVANT AREA CASE HISTORY:** (not a complete list; includes only accessory building BOA cases in Bixby Ranch Estates; does not include cases in unincorporated Tulsa County)

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**BACKGROUND INFORMATION:**

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*5. No structure of temporary character, tent, shack, barn, mobile homes, or other outbuildings shall be used on any lot at any time as a residence.” (emphasis added)*

*The language, read together, (1) allows “out-buildings incidental to the residential use of the plot,” and (2) does not expressly prohibit an Accessory Dwelling Unit (ADU), but rather, suggests the same were not anticipated. It does expressly prohibit temporary structures, including “outbuildings,” from*

being used as a residence, which does not appear to anticipate a permanent accessory dwelling unit being constructed within a part of an outbuilding otherwise dedicated to storage. The language appears to prohibit storage buildings, not built to a Building Code standard for dwellings or manifestly arranged with elements required to support semi-independent living quarters, from being remodeled, retrofitted, or otherwise simply inhabited as a dwelling. However, Staff does not have the standing to officially interpret the private covenants either way. If the Board, however, chooses to read and interpret the private covenants as prohibiting the Accessory Dwelling Unit, BBOA-589 must be tabled or denied, and BBOA-590 and this application would then be moot.

History of the Applications. During the review of BBOA-589, Staff found that the building proposed, 50' X 72' (3,600 square feet) would exceed the absolute maximum detached accessory building restriction in the RE and RS districts, which is 2,400 square feet. There is a "sliding scale" in Zoning Code Section 11-8-8.B.5, which the subject property, at approximately 4.8 acres, does not even qualify for 2,400 square feet, which requires 5.25 acres.

Zoning Code Section 11-8-5.C specifically restricts detached accessory buildings containing ADUs to the restrictions pertaining to accessory buildings:

"C. ADUs, if detached from the principal dwelling, shall meet the requirements prescribed for a detached accessory building;"

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ANALYSIS:

Property Conditions. The subject property is a vacant/wooded lot containing approximately 5 acres and zoned RE. In the second quarter of 2014, the City of Bixby issued a Building Permit to allow the construction of a residence on the lot.

Tests and Standard for Granting Variance. Oklahoma State Statutes Title 11 Section 44.107 and Bixby Zoning Code Section 11-4-8.A and .C together provide the following generalized tests and standards for the granting of Variance:

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Nature of Variance. The Applicant's client is seeking to construct an Accessory Dwelling Unit within a proposed 50' X 72', 3,600 square foot accessory building. Per BBOA-595 and the submitted information, the living quarters would occupy the "front" 20' of the 50'-wide building, and so would contain 1,000 square feet.

Zoning Code Section 11-8-8.B.5 limits the accessory building to an absolute maximum of 2,400 square feet. There is a "sliding scale" in Zoning Code Section 11-8-8.B.5, under which the subject property, at approximately 4.8 acres, does not even qualify for 2,400 square feet.

Per this application, the Applicant is seeking a Variance from the accessory building maximum floor area standard per Zoning Code Section 11-8-8.B.5 to permit the 3,600 square foot accessory building.

The building may also exceed the square footage of the first floor of the house, which size restriction would also be covered by the scope of this application as advertised to the Public.

The Applicant provided a site plan, building plans and specifications, photos of other properties in the neighborhood, and a narrative in support of BBOA-589 and BBOA-590. Relevant parts of this information have been applied to the analysis of this application.

The neighbor abutting the subject property to the west submitted a formal response to BBOA-589 and BBOA-590 "(and all related BOAs)," which response is attached to this report. The response appears to provide certain objections and expresses certain concerns for the applications.

It should be noted that the term "ADU," as used in the Applicant's narrative and as also used in the neighbor's narrative, is interpreted as usually meaning "accessory building," not an "ADU" as defined in the Zoning Code. Staff is not aware of any existing ADUs in the neighborhood, and the neighbor's narrative disclaims the existence of any here, but it is possible such exist.

Zoning Code Section 11-8-8.B.5 provides:

*"5. In the RE and RS districts, detached accessory buildings may be located in a rear yard, provided the accessory building(s) in the aggregate do not cover more than twenty percent (20%) of the area of the rear yard or exceed eight hundred (800) square feet of floor area, whichever is less.*

*No accessory building shall exceed the height of the primary dwelling on the lot.*

*In the RE and RS districts, lots containing at least one acre of lot area shall be permitted to exceed the eight hundred (800) square foot floor area limitation by 11.6 percent. Further, lots containing 1.25 acres or more of lot area shall be permitted to exceed eight hundred (800) square feet by an additional 11.6 percent for each one-fourth ( $\frac{1}{4}$ ) of an acre over one acre, provided that in no case shall accessory building(s) in the aggregate exceed the square footage of the first floor of the primary dwelling or two thousand four hundred (2,400) square feet, whichever is less, or cover more than twenty percent (20%) of the area of the rear yard. (Ord. 2031, 12-21-2009)"*

*As the subject property is in the RE residential zoning district and contains approximately 4.8 acres, the maximum allowable detached accessory building size is 2,284.8 square feet.*

*The "sliding scale" was introduced as a measure of flexibility, along with an increase in the basic maximum square footage from 750 square feet to 800 square feet, by Ordinance # 2031, approved December 21, 2009. It was designed to allow people to have larger accessory buildings, if they had enough land so that the accessory building did not dominate the parcel aesthetically and so detract from the neighborhood. The "sliding scale" was calculated in order to start at 800 square feet and increase regularly for each  $\frac{1}{4}$  acre increment to the maximum of 2,400 square feet, which requires a lot containing slightly more than 5.25 acres.*

*This is the eighth application for Variance which has been received since the added flexibility was created, and it is requesting a Variance to exceed even the new flexibility. The first was BBOA-550 – Mitch & Gail Pilgrim, which the Board approved 12/05/2011 for that property located in Bixhoma Lake Estates. The second was BBOA-558 – John Ryel, which the Board approved 05/07/2012 for that property located in the Houser Addition. On August 06, 2012, the Board of Adjustment denied an application to build a 5,000 square foot addition to an existing 900 square foot accessory building for an unplatted 1-acre tract at 14426 S. Harvard Ave. (BBOA-565 – Robert Campbell III & Karen M. Campbell). On October 01, 2012, the Board approved BBOA-568 – Roger O. Nunley, Jr., allowing a new 960 square foot addition to an existing 2,000 square foot accessory structure for property in the RS-1 District at 8703 E. 124<sup>th</sup> St. S. in Southern Memorial Acres No. 2. On April 01, 2013, the Board approved BBOA-572 – Spencer Thompson, allowing a new 30' X 50' (1,500) square foot accessory building in the rear yard of property of 0.625 acres in the RS-1 District at 7702 E. 131<sup>st</sup> St. S., and also approved BBOA-575 – Blake Fugett, allowing a new 40.25' X 60.25' (2,425) square foot accessory building in the rear yard for property of 1.2 acres in the RE District at 5257 E. 161<sup>st</sup> St. S. Most recently, on April 07, 2014, the Board approved BBOA-586 – Thomas Black, allowing a new 1,200 square foot accessory building in the rear yard for property of  $\frac{1}{3}$  of an acre in the RS-1 District at 8301 E. 131<sup>st</sup> Pl. S. in Henry Ferguson Addition.*

*Unnecessary Hardship. The Applicant claims that an Unnecessary Hardship would be caused by the literal enforcement of the Zoning Code because "Need additional room for storage of equipment, tractor, mower, RV, cars along w/ living space."*

*The argument appears to be that the failure to be granted Variance would deprive the owner of the right to construct accessory building exceeding the maximum size restriction, and that additional space is needed for all of the items desired to be stored in addition to the ADU. Staff does not dispute that this claim is true, and may amount to an Unnecessary Hardship.*

*Peculiar, Extraordinary, or Exceptional Conditions or Circumstances. The Applicant responded to the question asking how the subject property and its Condition or Situation is Peculiar, Extraordinary, and/or Exceptional by stating, "Heavy woods will not be able to see from road and neighbors set back two hundred feet from road."*

*The argument appears to indicate that the heavy woods and the 200' plus setback would cause the building to not be seen from the road, which would mitigate the need for the matching exteriors requirement. Whether or not it may be seen from 205<sup>th</sup> St. S. is debatable, but it should be agreed that it*

will be less visible due to circumstances as proposed. In BBOA-590, the Applicant used a similar argument, but also cited the lot size, the rural nature of the area, and the location of the accessory building/ADU behind the house. All of these are better arguments for the No Substantial Detriment text and standard, but they appear to somewhat address this text and standard as well. The Board must find that they adequately satisfy this test and standard provided in State Statutes and the Bixby Zoning Code. Finding of No Substantial Detriment or Impairment. The Applicant claims that the requested Variance would Not Cause Substantial Detriment to the Public Good or Impair the Purposes, Spirit and Intent of the Zoning Code or the Comprehensive Plan because "Other lots with in this subdivision have applied and been granted variances for larger buildings."

Of the several fundamental purposes for imposing maximum accessory building size and rear yard placement restrictions, Staff believes the primary reason is for the sake of consistency of design, proportionality, and mode of placement of structures (aesthetics).

In the narrative submitted to support BBOA-589 and BBOA-590, the Applicant has further addressed this question thus, "Other lots that had [accessory buildings] I could not see or get access for pictures. Area older neighborhood with heavy cover. Could not find one building that had any matching elements except color of metal siding on one. Lot next to site has [an accessory] metal building with no matching elements."

On this site the home and ADU will [sit] back 200' in heavy wooded lot. Will be very hard to see from road or neighbors with the exception of lot to the East.

This property with the ADU not only hard to see from the road but also is very consistent with surrounding lots, homes, and [accessory buildings]. Very private and secluded area of South Bixby."

Based on the provided materials, the proposal includes: House will be set back 210' from 205<sup>th</sup> St. S., accessory building will be set back 275' from 205<sup>th</sup> St. S. (or 5' behind the back of the house, even though not accurately represented on the site plan from a relative standpoint), lot is heavily wooded, accessory building will not be as visible from street or adjoining properties (except to the east) due to location behind the house and the heavy tree cover, and several other properties in the neighborhood have accessory buildings, commonly metal buildings and commonly large.

The case history in the neighborhood also reflects a large number of large storage buildings in the neighborhood. The proposed one, however, would be the largest such accessory building reflected in the available records.

On August 06, 2001, the Board of Adjustment approved BBOA-369 – Lorrie Penrose & Garret Roth, a request for "Special Exception" to allow a 3,081 square foot detached garage for storing vintage vehicles for property at 20227 S. 138<sup>th</sup> E. Ave. in Bixby Ranch Estates. This property of less than 2 acres is located approximately 1,300' to the northeast of the subject property, or approximately 'five (5) houses down' as one would drive, and aerial data indicates the accessory building is indeed approximately the size as approved. At the time, that Variance was larger than what would be approved here, since buildings were then restricted to around 750 square feet, regardless of the size of the lot.

Staff agrees that the lot size, the rural nature of the area, the heavy woods, the 200' plus setback, location of the accessory building/ADU behind the house, and the commonness of oversized metal storage buildings in the neighborhood all combine to mitigate the need for restricting the size of the accessory building in satisfaction of this test and standard of State Statutes and the Bixby Zoning Code.

Finding of Minimum Necessary. The Applicant claims that the requested Variance would be the Minimum Necessary to Alleviate the Unnecessary Hardship because "Not only a living space for aging parent but storage and garage space for vehicles, tractors, mowers etc." Elsewhere, the Applicant has stated the amount of space requested would be for storage of "equipment, tractor, mower, RV, cars along w/ living space."

Recognizing the intent behind the "sliding scale" flexibility provision, Staff believes it should be somewhat more difficult to justify this test and standard. If the Board is amenable to this application, it must find that the proposed 3,600 square feet of accessory building, 58% larger than the applicable 2,284.8 square foot maximum, is the Minimum Necessary to Alleviate the Unnecessary Hardship.

Although the ADU provisions of the Zoning Code require compliance with accessory building restrictions, and do not provide exceptions when the ADU is constructed within part or all of an accessory building, it should be noted there that the living quarters would occupy the "front" 20' of the 50'-wide building, and so would occupy 1,000 square feet of the 3,600 square feet proposed.

The argument presented above regarding the precedent in the case of BBOA-369 – Lorrie Penrose & Garret may also be brought to bear here as it relates to the relative size of the Variance.

*Staff Recommendation. Except as noted otherwise hereinabove, Staff believes that the arguments provided by the Applicant and Staff appear to substantially meet some of the tests and standards of the Zoning Code and State Statutes. To the extent the arguments are found lacking, the Board may wish to consider other arguments that the Applicant and Board may discover during public hearing and consideration of this case at the meeting.*

Randy Even asserted that a carport would require additional approval. Mr. Even stated that the hardship would be the need to park the RV in the building, and that, if not approved for a building this size, it would be a hardship to the owner because he would not be able to [store and conduct all the activities desired] within the building. Mr. Even stated that his client was in his “retiring years of his life” and expressed concern for the “cost to go off site” to provide cover for the RV and a couple cars.

Larry Whiteley discussed with Randy Even where else on the property certain items could be stored.

Randy Even stated that there would be an additional 50’ X 20’ storage area over the living quarters.

Greg Batary expressed objection to there being two (2) structures on the subject property, both of which were larger than his house. Mr. Batary asserted it would be a detriment to his property to have two (2) houses on the property next to his. Mr. Batary reiterated his objection, “I object because there would be two (2) large homes, larger than 3,500 square feet.” Mr. Batary quoted parts of the Zoning Code and expressed objection that the proposed storage building would be in violation of these requirements.

Erik Enyart stated, “I would point out that the sections of the Zoning Code quoted are the ones from which the Variance is requested.”

Keith Churchill stated that this situation was “caused by not researching before buying,” and expressed objection for the “numerous deviations” and putting “everyone else in a tenuous situation.”

JR Donelson asked how high the house would be, and the Applicant responded it would be 28’ to the peak, and would have a 10/12 pitched rooves, so would have a “massive look.”

Randy Even responded to a previous statement and said that [he and his client] did research the property and proceeded with their plans because [a survey] showed a split lot, but further research revealed that the Lot-Split had not been followed through with. Mr. Even stated that the Lot-Split was the original intent. Mr. Even stated that the only foundation so far was for the house. Mr. Even stated that the projected “evolved; we were going to build two (2) separate houses, then it became a storage building.” Mr. Even stated that the Lot-Split was researched, and by the time Erik Enyart was approached, the concept was an ADU.

Chair Jeff Wilson expressed his concern that storage buildings were getting bigger and bigger. Mr. Wilson asked the Applicant if there was any leeway. Randy Even responded, “It’s almost not big enough the way it is.” Mr. Even stated that other accessory buildings in the neighborhood

were of all sizes, shapes, and materials. Mr. Even asserted that the project would improve the [neighborhood values].

Patrick Boulden asked how big the building would be, and Randy Even responded 3,800 square feet.

Chair Jeff Wilson asked, “Can you do 3,000” square feet?

JR Donelson stated that that would be roughly 40’ X 70’.

Around this time, Erik Enyart, referring to Randy Even’s previous statement about a carport requiring special approval, stated that a carport, either attached or detached from the accessory building, would be permitted in addition to the accessory building, without any special approval, if it met the minimum setbacks.

Larry Whiteley recalled [the last similar Variance for accessory building size] for a property behind the *Kum & Go* at 131<sup>st</sup> St. S. and indicated that the Board approved a Variance with a reduced size, in that case.

After further discussion, JR Donelson made a MOTION to APPROVE BBOA-595, limited to 3,000 square feet. Chair Jeff Wilson SECONDED the Motion. Roll was called:

**ROLL CALL:**

AYE:	King, Wilson, Donelson, & Whiteley
NAY:	None.
ABSTAIN:	None.
MOTION CARRIED:	4:0:0

Erik Enyart advised the Applicant that, if the carport, attached or detached to the accessory building, met the setbacks, no special approval was required.

5. **BBOA-593 – Lillie Stafford.** Discussion and possible action to approve a Special Exception per Zoning Code Section 11-7B-2 Table 1 to allow a Use Unit 6 single family dwelling in an RMH Residential Manufactured Home Park District.

Property located: Lot 5, Block 2, *LaCasa Movil Estates 2nd*, 12836 S. 72<sup>nd</sup> E. Ave.

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Chair Jeff Wilson introduced the item and called on Erik Enyart for the Staff Report and recommendation. Mr. Enyart summarized the Staff Report as follows:

<b><i>To:</i></b>	<i>Bixby Board of Adjustment</i>
<b><i>From:</i></b>	<i>Erik Enyart, AICP, City Planner</i>
<b><i>Date:</i></b>	<i>Wednesday, July 30, 2014</i>
<b><i>RE:</i></b>	<i>Report and Recommendations for: BBOA-593 – Lillie Stafford</i>

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**LOCATION:**

- Lot 5, Block 2, *LaCasa Movil Estates 2nd*
- 12836 S. 72<sup>nd</sup> E. Ave.

LOT SIZE: 0.6 acres, more or less  
ZONING: RMH Residential Manufactured Home Park District  
REQUEST: Special Exception per Zoning Code Section 11-7B-2 Table 1 to allow a Use Unit 6 single family dwelling in an RMH Residential Manufactured Home Park District  
SURROUNDING ZONING AND LAND USE: RMH, RD, & AG; Single-family manufactured homes zoned RMH to the north, east, and south in LaCasa Movil Estates 2nd and LaCasa Movil Estates and the Fry Creek Ditch drainage system to the west and further north zoned AG and RD.  
COMPREHENSIVE PLAN: Low Intensity + Residential Area  
PREVIOUS/RELATED CASES:

BZ-44 – Wallace Sheard, Jr. for Charles & Annabelle Galeotti – Request for rezoning from AG to RMH for 10 acres including subject property (later platted as LaCasa Movil Estates 2nd) – PC recommended Approval as per Staff recommendations 02/23/1976 and Town Board of Trustees Approved 04/20/1976 (Ord. # 309).

Final Plat of LaCasa Movil Estates 2nd – Request for Final Plat approval for LaCasa Movil Estates 2nd (includes subject property) – Planning Commission Recommended Conditional Approval 03/29/1976. Town Board of Trustees presumably Approved at some point between 03/29/1976 and 02/15/1977 when Plat # 3689 was recorded (Preliminary Plat approvals not researched).

RELEVANT AREA CASE HISTORY: (not necessarily a complete list)

BBOA-8 – Raymond E. Lansford for Wallace Sheard – Request for Variance from the common recreation space requirement of the RT district for approximately 10 acres to the east of subject property, which was later platted as LaCasa Movil Estates – BOA Approved in the first quarter of 1972 per case notes.

BZ-28 – Investment Dynamics Corporation – Request for rezoning from AG to CS and RM-2 for approximately 40 acres abutting subject property to the west (the easterly 20 acres later became part of Fry Creek Ditch right-of-way and the westerly 20 acres, for the most part, was later approved for PUD 32 and platted as Copperleaf) – PC recommended Denial as per Staff recommendations 08/26/1974, application Appealed to the Town Board of Trustees, and Town Board of Trustees Denied 09/17/1974. An incomplete District Court Answer to Petition dated January, 1975 with case number C 74 2735 found in case file. Official Zoning Map reflects some CS zoning at the west end of what is now Copperleaf and the balance of the property is zoned RD with a strip of AG along the east end of the acreage.

BZ-214 – City of Bixby – Request for rezoning to FD Floodway Supplemental District for all of the (then proposed) Fry Creek Ditch drainage system right-of-way, including a section abutting the subject property to the west – PC Tabled Indefinitely 11/20/1995.

BBOA-366 – John W. Neerman – Request for “Special Exception” from the 750 square foot maximum accessory building restriction in the RMH district to allow a 110’ X 140’, 1,600 square foot detached accessory building for property located 1 ½ blocks to the southeast of the subject property at 12921 S. 73<sup>rd</sup> E. Ave., Lot 3, Block 4, LaCasa Movil Estates (storage building was actually constructed on Lot 2, Block 4) – BOA Approved 04/02/2001 with the condition that no commercial use is permitted.

BACKGROUND INFORMATION:

ANALYSIS:

Property Conditions. The subject property is a vacant lot containing approximately 0.6 acres and zoned RMH. Within the past few weeks, pursuant to a Demolition Permit, the former manufactured home on the property was demolished. An accessory building remains on the property.

Comprehensive Plan. The Comprehensive Plan designates the subject property as (1) Low Intensity and (2) Residential Area.

The proposed conventional, site-built house use should be considered not inconsistent with the Comprehensive Plan.

Surrounding Zoning and Land Use Compatibility. Surrounding zoning patterns are primarily RMH, RD, and AG, and the surrounding land is primarily composed of single-family manufactured homes to the north, east, and south in LaCasa Movil Estates 2nd and LaCasa Movil Estates. The Fry Creek Ditch drainage system is located to the west and further north and is zoned AG and RD.

Notwithstanding the fact that the other houses are manufactured homes, the proposed conventional, site-built house use would appear to be not inconsistent with surrounding land uses and zoning patterns.

General. This application proposes to replace a former Use Unit 9 manufactured home with a new conventional, site-built house, Use Unit 6.

The subject property is zoned RMH Residential Manufactured Home Park district. This district is designed to allow for manufactured home parks, but also permits the development of manufactured home subdivisions (for individual lot ownership), such as in the case of this La Casa Movil Estates 2nd. The RMH district requires a Special Exception to allow a Use Unit 6 site-built house.

The requirement for a Special Exception for a conventional, site-built home in the RMH district presumably allows for a site-specific review for compatibility and appropriateness.

The Applicant's narrative suggests the existence of private restrictions, one of which specifically allowing the replacement of a manufactured home with a conventional, site-built home after a certain period of time. This document was not found, but if there is such a restrictive covenant, it demonstrates the developer anticipated this change would occur. The restrictive covenants filed with the earlier (1974) LaCasa Movil Estates, by the same developer (Wallace Sheard), do not appear to contain such a covenant, but do demonstrate intentional restrictions and covenants designed to help the neighborhood sustain compatibility, quality of construction, and property values.

Staff does not believe that this improvement would in any way be injurious to the neighborhood or otherwise detrimental to the public welfare. Rather, Staff believes a conventional, site-built home, in this case, would only improve the neighborhood.

Staff Recommendation. For the reasons outlined above, Staff believes that the requested Special Exception for a Use Unit 6 conventional, site-built home in the RMH district would be in harmony with the spirit and intent of the Zoning Code and would not be injurious to the neighborhood or otherwise detrimental to the public welfare. Staff recommends that Approval.

Chair Jeff Wilson recognized Applicant Lillie Stafford of 12836 S. 72<sup>nd</sup> E. Ave. from the Sign-In Sheet. Ms. Stafford discussed her application and noted that she had come to the City some time ago and was told everything would be fine, and then she found out about this, the floodplain issue, and the setback issue, which other issues she had resolved. Ms. Stafford stated that the neighbors that lived around her were "excited about it."

After further discussion, Larry Whiteley made a MOTION to APPROVE BBOA-593 as recommended by Staff. JR Donelson SECONDED the Motion. Roll was called:

ROLL CALL:

AYE:	King, Wilson, Donelson, & Whiteley
NAY:	None.
ABSTAIN:	None.
MOTION CARRIED:	4:0:0

6. **BBOA-594 – PlanScape Partners for Tycon Properties, LLC.** Discussion and possible action to approve (1) a Variance from certain minimum building setbacks per Zoning Code Section 11-7D-4 Table 2, (2) a Variance from the minimum parking lot setback requirements from Memorial Dr., 129<sup>th</sup> St. S., and an abutting RS-1 residential district per Zoning Code Section 11-10-3.B Table 1, (3) a Variance from the minimum width landscaped strips along Memorial Dr., 129<sup>th</sup> St. S., and an abutting RS-1 residential district per Zoning Code Sections 11-12-3.A.2, 11-12-3.A.3, and 11-12-3.A.7, (4) a Variance from certain other landscaping requirements of Title 11 Chapter 12, and (5) a Variance from any other bulk and area and/or developments standards of the Zoning Code with which the subject property does not comply, all to allow for the expansion of an existing building on an existing lot of record in the CG General Commercial District.  
Property located: Part of Lot 1, Block 1, *Clyde Miller Acreage*; 12850 S. Memorial Dr.



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Chair Jeff Wilson introduced the item. Erik Enyart stated that the item had been Withdrawn by the Applicant.

Mr. Schooley expressed concern for speeders in the neighborhood.

No action taken.

7. **BBOA-596 – Jackie W. Miller.** Discussion and possible action to approve a Special Exception per Zoning Code Section 11-8-8.B.9 to allow an 18' X 21' carport within the required front yard setback for property within the RS-1 Residential Single-Family District.  
Property located: Lots 1 and 2, Block 1, *Springtree Addition*; 14208 S. Harvard Pl.
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Chair Jeff Wilson introduced the item and called on Erik Enyart for the Staff Report and recommendation. Mr. Enyart summarized the Staff Report as follows:

**To:** *Bixby Board of Adjustment*  
**From:** *Erik Enyart, AICP, City Planner*  
**Date:** *Wednesday, July 30, 2014*  
**RE:** *Report and Recommendations for:  
BBOA-596 – Jackie Miller*

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LOCATION: – *Lots 1 and 2, Block 1, Springtree Addition*  
– *14208 S. Harvard Pl.*  
LOT SIZE: *2/3 acres, more or less*  
ZONING: *RS-1 Residential Single-Family District*  
REQUEST: *Special Exception per Zoning Code Section 11-8-8.B.9 to allow an 18' X 21' carport within the required front yard setback for property within the RS-1 Residential Single-Family District*

SURROUNDING ZONING AND LAND USE:

North: *RS-1, RS-2, AG, CS & CS/RS-2/PUD 40 (Jenks); Single-family homes zoned RS-1 in Springtree, vacant land zoned CS, RS-2, and RS-1 to the northwest in Jenks, vacant land zoned CS/PUD 40 further north in Jenks, and single family residential homes and vacant lots further to the northeast in Dutchers Crossing I and Dutchers Crossing II zoned RS-2/PUD 40 in Jenks.*

South: *RS-1 & RS-1/RS-3/PUD 12-D; Single-family homes zoned RS-1 in Springtree and vacant land zoned RS-1/RS-3/PUD 12-D further south.*

East: *RS-1; Single-family homes zoned RS-1 in Springtree.*

West: *RS-1, RS-2, AG, CS; Rural residential and vacant land across Harvard Ave. to the west zoned AG in unincorporated Tulsa County and vacant land zoned CS, RS-2, and RS-1 to the northwest in Jenks.*

COMPREHENSIVE PLAN: *Low Intensity + Residential Area*

PREVIOUS/RELATED CASES: *(not necessarily a complete list)*

BZ-57 – Joe Donelson/J-B Engineering Co. for Frank & Maria Sweetin/Jody Sweetin – *Request for rezoning from AG to RS-1 for approximately 142 acres (all of the NW/4 Less & Except the E. 300' thereof) (included subject property) – PC Recommended Approval 07/25/1977 and City Council Approved 09/12/1977 (Ord. # 337).*

BZ-58 – Joe Donelson/J-B Engineering Co. for Frank & Maria Sweetin/Jody Sweetin – *Request for rezoning from AG to RS-2 for approximately 142 acres (all of the NW/4 Less & Except the E. 300' thereof) (included subject property) – Withdrawn 10/03/1977.*

Final Plat of Springtree – Jody L. Sweetin – City Council approved the Final Plat of Springtree (included subject property) 04/03/1978 and Plat # 3794 recorded April 28, 1978 (PC and Preliminary Plat approvals not researched).

**RELEVANT AREA CASE HISTORY:** (not necessarily a complete list and does not include cases in unincorporated Tulsa County or the City of Jenks)

BZ-66 – Jody L. Sweetin – Request for rezoning from RS-1 to RS-2 for approximately 100.53 acres (all of the NW/4 lying south of Springtree, Less & Except the E. 300' thereof) to the south of subject property – PC Recommended Approval 07/31/1978 and City Council Approved 10/16/1978 (Ord. 364).

Final Plat of “Springtree South” – Jody Sweetin – Request for Final Plat for “Springtree South,” including 189 lots, for approximately 101 acres (all of the NW/4 lying south of Springtree, Less & Except the E. 300' thereof) to the south of subject property – PC Recommended Conditional Approval 07/30/1979 (not ever platted).

BBOA-109 – James & Julie Lovett – Request for Special Exception to allow a “bake shop” as a home occupation in the RS-1 district for Lot 6, Block 4, Springtree, addressed 3633 E. 143<sup>rd</sup> St. S., located to the east of the subject property – BOA Conditionally Approved 11/08/1982.

BBOA-192 – Mark Burns – Request for Variance from the front setback for an existing house in the RS-1 district for Lot 9, Block 3, Springtree, addressed 3420 E. 142<sup>nd</sup> St. S., located to the east of the subject property – BOA Approved 08/13/1987 per case notes.

BZ-197 – Stephen D. Carr / George Suppes – Request for rezoning to RS-3, RM-2, CS, and IL for approximately 399.49 acres (Lots 2, 3, and 5, Block 1, Sitrin Center Addition, Less & Except that part lying E. of the Centerline of Kimberly-Clark Pl., and Lot 6, Block 1, Sitrin Center Addition, Less & Except the E. 300' thereof, and the NW/4 of this Section lying south of Springtree, Less & Except the E. 300' thereof) to the south of subject property – PC Recommended Modified Approval 03/21/1991 and City Council Approved with modifications, including IL, CS, RM-2, RS-3, and RS-1, on 04/13/1991 (Ord. # 652).

BPUD (PUD) 12 – George Suppes / Stephen D. Carr & Associates – Request for PUD approval for approximately 399.49 acres (Lots 2, 3, and 5, Block 1, Sitrin Center Addition, Less & Except that part lying E. of the Centerline of Kimberly-Clark Pl., and Lot 6, Block 1, Sitrin Center Addition, Less & Except the E. 300' thereof, and the NW/4 of this Section lying south of Springtree, Less & Except the E. 300' thereof) – replaced PUD 3 for the concerned part thereof to the south of subject property – PC Recommended Approval 03/21/1991 and City Council Approved 04/13/1991 (Ord. # 653; ordinance appears to have excluded the W/2 of the SW/4 of Section 16, T17N, R13E).

PUD 12 Major Amendment – “Amendment A” – Stephen D. Carr & Associates – Request for Major Amendment to PUD 12 to the south of subject property – redesignated BPUD 12 as “PUD 12-A” – PC recommended Conditional Approval 11/21/1994 and City Council Approved 01/09/1995 (Ord. # 713; ordinance appears to have used a legal description that did not properly close. The part with the deficient legal description corresponded to the PUD acreage lying outside Sitrin Center Addition. Because of the legal description error, INCOG did not change the official Zoning Map to reflect “PUD 12-A.” Since superseded by PUD 12-D).

PUD 12-A Major Amendment – “Amendment B” – Stephen D. Carr & Associates – Request for Major Amendment to PUD 12 to the south of property – PC recommended Conditional Approval 11/21/1994 and City Council Approved 03/23/1998. However, it was not approved by ordinance, as required (reference Zoning Code Sections 11-7I-8.G, 11-7I-8.D, and 11-5-4.E.3). Rather, it was approved by majority vote of the City Council per the approved Minutes of the March 23, 1998 City Council meeting.

BBOA-356 – Randy Lynn – Request for “Special Exception” from certain bulk and area standards pertaining to an accessory building in the RS-1 district for Lot 7, Block 2, Springtree, addressed 3607 E. 142<sup>nd</sup> St. S., located to the northeast of the subject property – BOA Approved 04/03/2000.

BBOA-451 – Chris & Mary Smith – Request for Variance from the front setback in the RS-1 district for Lot 5, Block 1, Springtree, addressed 3311 E. 142<sup>nd</sup> St. S., located just north of the subject property – BOA Approved 04/02/2007.

PUD 12-A Major Amendment – “Amendment C” – “Amendment C” to PUD 12 was received from attorney George Suppes on 10/17/2007. It was not formally submitted for consideration, was not approved, and so has no effect. It is listed here for accounting purposes. The 2012/2013 Major

*Amendment was designated Amendment # D “Geiler Park” to account for all versions known to have existed.*

*PUD 12-A – Major Amendment # D “Geiler Park” – Request for approval of Major Amendment # D to PUD 12-A, to be known as “PUD 12-D” for Geiler Park, which amendment proposed the extension of the business/industrial park areas, the inclusion of additional permitted uses within the business/industrial park areas, and the modification of bulk and area limitations – PC Recommended Conditional Approval 07/16/2012 and City Council Conditionally Approved the application only, and not the ordinance effecting the zoning change, 08/13/2012 (Ord. # 2088 executed in error). City Council repealed the spurious Ord. # 2088 and approved Major Amendment # D by new ordinance 02/11/2013 (Ord. # 2114).*

**BACKGROUND INFORMATION:**

*At the March 23, 2009 City Council (“Council”) meeting, the Council approved a temporary moratorium on new carport permits until it had time to study the matter.*

*On April 27, 2009, the Council approved an item to authorize Staff to proceed with a possible amendment to the Zoning Code to provide a Special Exception requirement when located in required yards and other Zoning regulations for carports.*

*Per Zoning Code Section 11-11-8.B.6 as previously written, carports were allowed in required yards by right. The amendment’s primary effect was to (1) add a Special Exception requirement for carports when located in required yards / setbacks, and (2) add location and appearance standards for all carports.*

*On June 22, 2009, the Council approved an agenda item to direct staff to prepare an ordinance amending the Zoning Code, based on the recommendations by the Planning Commission on 06/15/2009, the City Planner, and the City Attorney. The Council approved Ordinance # 2020 on July 27, 2009, which included certain last-minute changes as recommended by Staff June 22, 2009 and as the Council indicated favor for at that meeting. That last-minute change removed most of the “rigidity” originally borrowed from the City of Tulsa Zoning Code example, and put in its place more flexibility for the Board of Adjustment to determine size and appearance standards on a case-by-case basis, and after considering the surrounding context of the property in question.*

*The changes to the Zoning Code per Ordinance # 2020 are as follows:*

*Section 11-7B-3.B.1.b was amended as follows:*

*“b. A detached accessory building shall not be located in the front or side yard.”*

*Section 11-8-8.B.6 was amended as follows:*

*“6. Swimming pools, tennis courts, patios, fallout and other protective shelters in the rear yard only, unless approved for a Special Exception in accordance with the substantive and procedural standards for the same set forth in this Zoning Code. Carports shall comply with the Special Exception and other carport regulations set forth in this Zoning Code.”*

*New Section 11-8-8.B.9 is as follows:*

*“9. Carports may be permitted in required yards by Special Exception, as provided in Chapter 4 of this Title. Carports in all other areas shall be permitted by right, provided such carport does not cover an area of more than 400 square feet and provided that no portion of a carport structure shall be nearer to the side lot lines than the principal building on the lot, nor five (5) feet, whichever is a greater distance from the side lot line.*

*No portion of any carport structure shall extend more than twenty (20) feet from the front of the existing principal building. Carports may be a detached accessory structure or an integral part of the principal building. The maximum floor area limitations of this Title pertaining to accessory buildings shall not apply to carports.”*

**11-4-9: SPECIAL EXCEPTION:**

*“A. General: The board of adjustment, upon application and after hearing, subject to the procedural and substantive standards hereinafter set forth, may grant the following special exceptions:....”*

New Section 11-4-9.A.8 is as follows:

- “8. Within an R district, any type of carport occupying a portion of a required yard, subject to the requirements of Section 11-8-8.B.9 of this Title. When evaluating the requested Special Exception, the Board shall consider the following factors:
- a. The existence, location, and design of other carports in the immediate vicinity of the request;
  - b. Any possible sight obstruction to motorists at street intersections;
  - c. The visual impact of the proposed carport on the streetscape of the neighborhood;
  - d. The uniqueness of the request and whether granting the Special Exception will set a precedent for justifying other carports throughout the neighborhood;
  - e. The compatibility of the carport with the architectural style of the dwelling and the predominant architectural style of the neighborhood; and
  - f. Constructive criticism and suggestions from property owners within the neighborhood.”

ANALYSIS:

Property Conditions. The subject property contains one (1) single-family house on Lot 2, Block 1, Springtree Addition. The subject property is zoned RS-1 Residential Single-Family Low Density District. Together with the vacant Lot 1, Block 1, Springtree Addition portion of the subject property, with which Lot 2 was recently legally combined, the subject property contains approximately 2/3 of an acre. The vacant Lot 1 portion was recently issued a Building Permit for a carport for an RV, which carport met the setback requirements and so did not require a Special Exception per Zoning Code Section 11-8-8.B.9.

The subject property slopes downward moderately to the south. It ultimately drains to Posey Creek.

Special Exception Request. The Applicant is requesting a Special Exception per Zoning Code Section 11-8-8.B.9 to allow an 18' X 21' carport within the required front yard setback. See the Compatibility section of this report for further analysis.

Comprehensive Plan. The Comprehensive Plan designates the subject property as (1) Low Intensity and (2) Residential Area. The proposed carport by Special Exception attending the existing single-family dwelling would not be inconsistent with the Comprehensive Plan.

Surrounding Zoning and Land Use. The nearest surrounding zoning and land use patterns consist of single-family residential homes zoned RS-1 to the north, east, and south in Springtree and rural residential and vacant land across Harvard Ave. to the west zoned AG in unincorporated Tulsa County. The proposed carport by Special Exception attending the existing single-family dwelling would not be inconsistent with the surrounding Zoning and land use patterns.

Compatibility. The carport would set back from the right-of-way approximately 23 feet, according to the Applicant's statement and a provided plot plan. Because it would be located approximately 12 feet into the 35' setback required in the RS-1 district, a Special Exception is required.

Staff observed two (2) carports in the neighborhood, both at the intersection of 142<sup>nd</sup> St. S. and Knoxville Ave.

The provided plans indicate the structure would be relatively substantial, including a pitched roof, and not cheap in construction or appearance. The quality of construction proposed should be made a Condition of Approval, if approval is granted.

Staff Recommendation. Unless constructive criticism from neighbors reveals need for approval conditions, Staff has no objection, subject to (1) substantial conformance to the plans provided by the Applicant and (2) full compliance with carport standards in the Zoning Code, including the paved parking surface requirement.

After some discussion, JR Donelson made a MOTION to APPROVE BBOA-596 subject to the Conditions of Approval as recommended by Staff. Larry Whiteley SECONDED the Motion. Roll was called:

ROLL CALL:

AYE: King, Wilson, Donelson, & Whiteley  
NAY: None.  
ABSTAIN: None.  
MOTION CARRIED: 4:0:0

ADJOURNMENT

Larry Whiteley made a MOTION to ADJOURN. Murray King SECONDED the Motion. Roll was called:

ROLL CALL:

AYE: King, Wilson, Donelson, & Whiteley  
NAY: None.  
ABSTAIN: None.  
MOTION CARRIED: 4:0:0

Meeting was Adjourned at 7:39 PM.

APPROVED BY:

\_\_\_\_\_

Chair

\_\_\_\_\_

Date

\_\_\_\_\_

City Planner/Recording Secretary